

## **REMARKS**

Claims 17-36 were pending in this case, and upon entry of this Amendment, Claims 17-36 will remain pending.

Claims 17-36 stand rejected under 35 U.S.C. Section 103(a) as obvious over Kojima et al (WO 96/31121) in view of Kaneko et al (U.S. 4,351,753) and Feucht et al (US 6,395,684 and 6,562,760).

Applicants have received and appreciate the translation of the Kojima reference. As explained clearly on pages 2 and 3 of the specification, the present invention has found an extremely surprising find that alcohol ethoxylates of the formula (I) of the present invention with a degree of ethoxylation of 4 through 8 are considerably more suitable as penetrants **for herbicidally active triazolinones**. That is the heart of the invention and represents an important step forward in the art for which Applicant's are entitled to patent protection. Indeed, the method claim of Claim 17 is directed to that very point. Nowhere in the abstract of Kojima, nor in the combination of Kojima with Kaneko is this taught or suggested. Kusakattozoru and Sapoto are not triazolinone herbicides. Therefore, Kojima cannot anticipate the present invention. And given the differences between Kusakattozoru and Sapoto herbicides and the triazolinones of the present invention, it is not fairly asserted that Kojima renders the present invention obvious.

Kaneko is directed only to pesticides generally, and even that it is only directed to avoiding having to make an emulsifiable concentrate or a wettable powder by making a flowable formulation as set forth in column 1, lines 10-45. It merely notes in passing at column 1, line 54-56 that alcohol ethoxylates can be **a good solvent**, but there is **no recognition** of pairing the specifically claimed alcohol ethoxylates with the claimed degrees of ethoxylation of the present invention with the specifically claimed herbicidally active compounds (the claimed triazolinones) **to obtain the enhanced penetration** of the present invention, as demonstrated in the Examples of the present invention. And further, the Kaneko formulae shown on at column 2, last line and column 3, line 15 differ markedly from that of the present invention in any event.

Applicants reassert that in the Office Action there are broad leaps of what is obvious in the art, with broad assumptions like that the triazolinones of the present

invention will always behave in the same fashion as the other compounds of the references, and that if one would have been motivated to include N=6 for flowability, for some reason one would have selected that for the present invention despite the fact that here it is penetration and now flowability that is being sought.

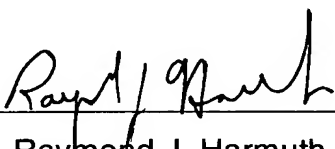
**Penetration and flowability are not the same thing.**

Further, the Office Action simply concludes at the bottom of page 5 that the ranges are obvious as being mere optimization, but where in Kojima, Kaneko or Feucht '684 or Feucht '760 are ANY ranges taught or suggested, particularly when none of them are attempting to improve penetration?

It is only armed with impermissible hindsight after having read the present specification that one might come up with the claimed ranges of the present invention. In particular, Claims 17-20 directed to a method of improving penetration surely cannot be obvious over art that does not even deal with the issue of penetration at all.

In light of these remarks, Applicants believe the case is in condition for allowance. Review and reconsideration of the case and allowance of the same are respectfully requested.

Respectfully submitted,

By   
Raymond J. Harmuth  
Attorney for Applicants  
Reg. No. 33,896

Bayer CropScience LP  
2 T.W. Alexander Drive  
Research Triangle Park, NC 27709  
PH: (919) 549-2102  
Fax: (919) 549-3994

Q:patents/prosecution documents/cs8269/8269 Amendment 1.7.09